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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,137	05/15/2001	Eberhard Lipp	1746-6	1743

7590

09/18/2002

Harrison & Egbert
412 Main Street, 7th Floor
Houston, TX 77002

EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 09/18/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/858,137

Applicant(s)
Lipp

Examiner
Charles Cooley

Art Unit
1723



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-16 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

a. **Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.**

b. Telephone inquiries regarding this application should be directed to the Technology Center 1700 receptionist at ☎(703) 308-0651 or to the Examiner at ☎(703) 308-0112. Official facsimile correspondence filed before a final office action should be transmitted to ☎(703) 872-9310. Official facsimile correspondence which responds to a final office action should be transmitted to ☎(703) 872-9311. All *post-allowance* papers (e.g., Information Disclosure Statements, Rule 312 Amendments, petitions, etc.) should be mailed to **Box Issue Fee** or submitted via facsimile to ☎(703) 308-5864.

c. Inquiries regarding application status, matching responses with applications, patent term questions, locating and retrieval of applications, incomplete office actions, requests for copies of office actions and/or references, requests to remail office actions, small/large entity status, or other administrative inquiries should be directed to the **Technology Center 1700 Customer Service Center** at ☎(703) 306-5665.

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Claim Objections

2. Claims 12-16 appear drawn exclusively to Species B as outlined below. However, claims 1 and 8 appear drawn exclusively to Species A. Accordingly, claims 1 and 8 are not generic to both Species A and B so claims 12-16 appear mutually exclusive to the subject matter of claims 1 and 8 (from which claims 12-16 depend). If Applicant elects Species B, it an amendment to claims 1 and 8 would be required so claims 1 and 8 embrace the subject matter of Species B or rejections under 35 USC 112 would have to be considered (see 37 CFR 1.141 and MPEP 809.02(c)).

Election/Restriction

3. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: Figures 1-3; and

Species B: Figures 4-5.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic as explained above.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a

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listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. A telephone call was made to Andrew Chu on 13 SEP 2002 to request an oral election to the above restriction requirement, but did not result in an election being made. It was requested that the requirement be mailed.

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5. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is ☎ (703) 308-0112.

7. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is ☎ (703) 308-0651.

Dated: **16 September 2002**

A handwritten signature in cursive script, appearing to read "Charles Cooley", written over a horizontal line.

Charles Cooley
Primary Examiner
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